



Todd F. Silbergeld
Director-
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8888
Fax 202 408-4806

April 25, 1997

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EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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APR 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: *In the Matter of Computer III Further Remand Proceedings: Bell
Operating Company Provision of Enhanced Services, CC Docket No. 95-
20*

Dear Mr. Caton:

In accordance with the Commission's rules governing *ex parte* presentations, please be advised that yesterday Keith Epstein, Robert Gryzmala, Kathy Rehmer, Gina Harrison, and the undersigned met with Lisa Sockett, Blaise Scinto, Joe DiScipio, and Andrea Kearney of the Common Carrier Bureau's Policy and Program Planning Division.

The purpose of the meeting was to discuss SBC's positions in the above-referenced rule making dockets. The attached materials served as a general basis for our discussion and are provided to be included in the official record in this rule making docket. In accordance with Commission procedure, an original and one copy of this letter and attached materials are provided for your use.

Due to the late hour of the day that the meeting concluded, we are filing this notification with your office today. Should you have any questions concerning the foregoing, do not hesitate to contact me.

Very truly yours,

Attachment

cc: Ms. Sockett
Ms. Scinto
Mr. DiScipio
Ms. Kearney

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CC Docket No. 95-20
Computer Inquiry III (CI-III) Further Remand

**A Review of the FCC's CI-III Competitive Safeguards
and Related Provisions of the
Telecommunications Act of 1996**



Purpose

- Evaluate possible changes to the cost/benefit analysis of structural separation resulting from the structural separation/separate subsidiary requirements of the 1996 Act
- Describe the business impact of structural separation and non-structural separation
- Discuss how the FCC's non-structural safeguards from CI-III relate to provisions in the 1996 Act
 - Is it still necessary?
 - Can it be modified to work better?



Ninth Circuit's CI-III Further Remand

- Calls for FCC to explain why the unbundling approved in ONA plans is sufficient to prevent discrimination
- The Commission sought comment from parties in CC Docket No. 95-20
- The record in that docket demonstrates that:
 - ONA plans provide sufficient unbundling to meet ESP requirements and to prevent discrimination
 - Very few ESP requests for new elements
- No ESP complaints filed with FCC against SWBT, Pacific Bell or Nevada Bell with respect to denial of unbundled network elements



Possible Changes in the Cost/Benefit Analysis of Structural Separation Resulting from Requirements in the 1996 Act

- In conducting the CI-III Cost/Benefit Analysis, the Commission balanced three objectives:
 - Protect or foster competition in the enhanced service market
 - Prevent cross-subsidy
 - Incent deployment of enhanced services
- Changes in circumstances since the adoption of CI-III
 - Local exchange competition from CLECs reduces the opportunity for discrimination
 - Substantial competition in the enhanced services market exists today
 - Competitive Safeguards have worked well to detect and prevent anticompetitive activity and cross subsidy
 - Consumers have greater access to enhanced services as a direct result of the effectiveness of the Competitive Safeguards
- The CI-III Competitive Safeguards have created a critical balance whereby consumers are well served without unreasonable burden on competition or the BOCs



1996 Act Did Not Mandate a Separate Affiliate for IntraLATA Enhanced Services

- 1996 Act does not change circumstances under which the BOCs can offer IntraLATA enhanced services
 - BOCs may not want or need to offer enhanced services on an interLATA basis
 - Cost of continuing existing intraLATA enhanced services are not substantially changed as a result of the Act
 - Cost of moving to a separate affiliate would be extremely high, increasing costs to consumers
- Time lag until 271 relief will require continuing intraLATA provisioning of enhanced services
- The omission of a separate affiliate requirement in the Act for intraLATA enhanced services should not be ignored.
 - See OVS Order, CS Docket No. 96-46, 2nd R&O, released 6/3/96, para. 249



Separation Requirements of CI-III vs. The 1996 Act

- InterLATA information services and all electronic publishing services—but *not* any other information services—are subject to structural separation requirements under sections 272 & 274
 - Congressional judgment that structural separation is not required for other information services is entitled to substantial weight
- CI-III rules continue to apply for all information services offered on an intraLATA-only basis
- Section 272 rules apply when a BOC provisions an information service on an interLATA basis
 - BOC should retain the option of CI-III nonstructural safeguards for intraLATA information services



Contrast between the CI-III Unbundling and Unbundling under the 1996 Act

- Provides ESPs alternatives to CI-III unbundling -- they can purchase services from Competitive Local Exchange Carriers (CLECs)
 - CLECs can obtain network elements under Section 251 and can offer those elements, or new services based on fundamental elements, to ESPs
- Congress decided that ESPs should not have the right to Section 251 elements that CLECs have because ESPs do not incur carrier service obligations such as reciprocal compensation, quality of service, Universal Service and state certification
 - Section 251 elements are permitted “to any requesting telecommunications carrier for the provision of a telecommunication service.” Section 251(c)(3); 47 C.F.R. 51.307.



Several 1996 Act Safeguards Parallel Existing CI-III Safeguards

- Congress used very similar safeguards as it opened telecommunications markets to greater competition
- The FCC has several current proceedings examining those related safeguards:
 - Non-Accounting Safeguards, CC Docket No. 96-149
 - Accounting Safeguards, CC Docket No. 96-150
 - CC Docket No. 96-152 regarding Telemessaging, Electronic Publishing and Alarm Monitoring Services
 - The Commission's own inquiry into issues related to Customer Proprietary Network Information (CPNI), CC Docket No. 96-115
- If a BOC provisions an enhanced service on an intra- and interLATA basis, then compliance with Section 272 should be sufficient for both
- If a BOC provisions an enhanced service on a purely intraLATA basis, then compliance with CI-III only should be sufficient



Comparison of 1996 Act Safeguards and CI-III Safeguards

Safeguard	Inter/IntraLATA	IntraLATA Only
ONA/CEI	Replaced by Section 272	CEI Plans, ONA transitions to 120 Day process
Network Disclosure	Follow 96-98 Requirements	Follow CI-III Requirements
Nondiscriminatory installation, maintenance, and repair reporting	Sections 272(c)(1) or 272(e), as applicable	Follow CI-III Requirements
Accounting Safeguards	Follow 96-150 Requirements	Follow CI-III Requirements
CPNI	Follow 96-115 Requirements	Follow 96-115 Requirements



Implementation of 1996 Act Safeguards Provides Opportunities for Streamlining

- Eliminate CI-III reporting requirements except as otherwise required by Sections 272 (Section 251 requirements are unaffected)
 - Annual I&M Report
 - Annual and Semi-Annual on ONA Elements
- Adopt biennial audit requirements of Section 272
- If CEI Plan requirement is retained, implement an expedited (e.g., 30-day) approval process
- A single Network Disclosure process could include both CC Docket No. 96-98 and CI-III requirements
 - Communication of pending network change is the point of both
 - The industry would benefit from a single process for accessing needed information



Summary

- As the record in CC Docket No. 95-20 clearly demonstrates, the initial ONA plans, the 120-day Process and Network Disclosure are sufficient to prevent any potential for BOC discrimination
 - Lack of ESP requests for new unbundled services can only mean that there are no new network elements ESPs need or want
 - ONA reporting requirements should sunset
- CI-III requirements which have been subsumed by provisions of the 1996 Act should be eliminated
- Congress decided that structural separation is not required for information services other than interLATA information services and electronic publishing
 - No additional structural separation requirements should be imposed by the FCC
- BOCs need the flexibility to elect the form of regulation to apply to the enhanced service based on whether the service is an intraLATA-only service or includes interLATA components



APPENDIX

The CI-III Competitive Safeguards

- The Competitive Safeguards are intended to protect competition and consumers, while providing the BOCs with incentives to enter the enhanced service market
- The Commission created the Competitive Safeguards as comprehensive prerequisites to BOC entry into the market:
 - Network Disclosure
 - Non-discriminatory Installation, Maintenance, and Repair
 - Accounting Safeguards
 - ONA/CEI
 - CPNI



Network Disclosure

- BOCs required to notify ESP industry of new network interfaces to be used for enhanced services at least 6 months (12 months in some cases) prior to introduction to support a BOC enhanced service
 - Must maintain a list of parties to receive notification
 - Nothing is filed with FCC
- Notification process should be streamlined
 - Post disclosures on home page instead of mailing to a list



Non-discriminatory Installation, Maintenance, and Repair

- BOCs required to:
 - Track installation, maintenance, and repair intervals for ONA/CEI services used by BOC (or affiliate's) enhanced services and those used by ESPs
 - Periodically report service intervals to demonstrate there is no *de facto* discrimination
 - File annual officer's affidavit certifying that there is no discrimination
- Reporting process could be streamlined
 - Reduce frequency of reports
 - Post reports on home page instead of filing with FCC



Accounting Safeguards

- BOCs are required to:
 - File Cost Allocation Manual (CAM) documenting how expenses are directly assigned and attributed based on cost causation and how joint or common expenses (overheads) are allocated
 - For integrated operations, must comply with cost allocation rules to separate costs between regulated and nonregulated activities
 - For separated operations, must comply with affiliate transaction rules for the provision of services between the BOC and an affiliate
 - Annual audits assure compliance
- FCC's accounting rules have been approved by the 9th Circuit and are not a remand issue



Open Network Architecture (ONA)

- BOCs are required to:
 - Tariff all services in original ONA plan
 - Unbundle existing network elements into BSAs, BSEs, and CNSs
 - Implement 120-day process for ESPs to request new network elements and provide requested services if technically and economically feasible
 - ³ BOC ESP enhanced services operations must follow same process as unaffiliated ESPs to obtain new services
 - Provide all ESPs, including the BOC ESP, with access to Operational Support Systems (OSS) capabilities on the same terms and conditions:
 - ³ same access for BSAs and BSEs
 - ³ comparable access for CNSs
 - When BOC enhanced services equipment is collocated, must pay for distance-sensitive services as though located 2 miles from central office



Comparably Efficient Interconnection (CEI)

- BOCs required to obtain FCC approval of CEI plans for each new enhanced service
 - demonstrate that the underlying basic service arrangements are available to ESPs and BOC enhanced service operations on the same terms and conditions
- CEI process could be streamlined or eliminated
 - Existence of competitive local carriers precludes BOC discrimination
 - If CEI plans are required, plans should be deemed approved by FCC if Commission does not take action within 30 days